

**BEFORE THE  
STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

<b>In the Matter of:</b>	)	<b>Docket 03-CRS-01</b>
<b>Proposed Rulemaking Pertaining to</b>	)	
<b>Data Collection for Qualified Departing</b>	)	
<b>Load CRS Exemptions</b>	)	
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**COMMENTS OF THE ENERGY PRODUCERS AND  
USERS COALITION ON PROPOSED ACTION**

Evelyn Kahl  
Alcantar & Kahl LLP  
120 Montgomery Street  
Suite 2200  
San Francisco, CA 94104  
415.421.4143 office  
415.989.1263 fax  
[ek@a-klaw.com](mailto:ek@a-klaw.com)

Counsel to Energy Producers and Users  
Coalition

July 21, 2003

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Pursuant to the Notice of Renewables Committee Workshop to Consider Cost Responsibility Surcharge Regulations, the Energy Producers and Users Coalition (EPUC)<sup>1</sup> submit these comments on the Express Terms of the Proposed Action circulated on July 9, 2003 (“proposed regulations”). These comments reflect the oral comments provided by EPUC in the course of the workshop in this docket held on July 16, 2003.

**1. The regulations should clarify that “grandfathered” Departing Load will qualify for the Cost Responsibility Surcharge (CRS) Partial Exemption outside the scope of the Megawatt Cap. (Section 1395. Scope.)**

The proposed regulations do not address expressly whether the Commission intends to include within its scope of review projects classified as “grandfathered” Departing Load pursuant to California Public Utilities Commission Decision 03-04-030, as clarified by Decision 03-04-041 (the “DL Decision”). The proposed regulations should be refined to clarify that a

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<sup>1</sup> EPUC is an ad hoc group representing the electric end use and customer generation interests of the following companies: Aera Energy LLC, BP America Inc. (including Atlantic Richfield Company), Chevron U.S.A. Inc., Shell Oil Products US, Exxon Mobil Corporation, THUMS Long Beach Company, Occidental Elk Hills, Inc., and Valero Refining Company – California.

Departing Load that the Commission determines falls within the “grandfathered” category will qualify for a Partial Exemption outside of the Megawatt Cap procedures.

The DL Decision order, as it pertains to this category of customers, states in Ordering Paragraph 5:

*Customer generation, not otherwise included in Paragraph 4, that commenced operation on or before January 1, 2003, or for which an application for authority to construct was submitted to the lead agency under CEQA, not later than August 29, 2001, and (b) commercial operation commences not later than January 1, 2004 are not required to pay DWR ongoing power charges.*

Ordering Paragraph 9 provides that “*Customer generation departing load other than that defined in Ordering Paragraphs 4-8 above are not required to pay DWR ongoing power charges, except as provided in Ordering Paragraph 10 below.*” It is then in Ordering Paragraph 10 where the Megawatt Cap is defined. The DL Decision states:

***Exceptions adopted in today’s decision as provided in Ordering Paragraphs 8 and 9, shall expires when the cumulative total of customer generation departing load eligible under those Ordering Paragraphs exceeds 3,000 MW, as determined on a first-come, first-served basis by the California Energy Commission....***

This section makes clear that the exceptions expiring upon reaching the Megawatt Cap are those included in Paragraphs 8 and 9. The exception for “grandfathered” Departing Load defined in Paragraph 5 is thus expressly excluded from the Megawatt Cap.

Accordingly, “grandfathered” Departing Load should not be handled under the procedures specified for Megawatt Cap qualification. EPUC proposes that this category of Departing Load should be qualified through a separate process

administered by the Commission to verify that the load meets the criteria specified in Ordering Paragraph 5. Upon verification, the Commission should forward its conclusions to the affected utility for exemption.

**2. The Commission should conform the definition of “Customer Generation” to the definition adopted by the CPUC in the DL Decision. (Section 1395.1. Rules of Construction and Definition)**

The proposed regulations adopt a definition for “Customer Generation” to be employed in applying the regulations. Subdivision (k) defines this term as follows:

*“Customer Generation” means cogeneration, renewable technologies or any other type of generation that is dedicated wholly or in part to serve a specific customer’s load, and generally located at or near the point of consumption.*

This definition differs from the definition adopted by the CPUC in the DL Decision. That decision defines the term as follows:

*“Customer Generation” as used in this order, refers to cogeneration, renewable technologies, or any other type of generation that (a) is dedicated wholly or in part to serve a specific customer’s load; and (b) relies on non-utility or dedicated utility distribution wires rather than the utility grid, to serve the customer, the customer’s affiliates and/or tenant’s, and/or not more than two other persons or corporations. Those two persons or corporations must be located on site or adjacent to the real property on which the generator is located.*

(See DL Decision, mimeo, at 3-4.)

In some cases, the differences between these definitions may be quite material. On an industrial site, for example, a single customer generation unit may serve the load of a customer, an affiliate of the customer, a tenant on the property and/or a separate corporation with operations supporting the primary industrial operation. Applying the definition in the proposed regulations thus

would materially constrain the types of load that could qualify for the exemption in a manner inconsistent with the express language of the CPUC DL Decision.

Accordingly, the Commission should avoid conflicts with the DL Decision by adopting the CPUC's definition of "Customer Generation."

**3. The Commission should conform the definition of Departing Load to the DL Decision.**

Subdivision (l) of the proposed regulations defines "Departing Load" for purposes of determining the class of customers to which a CRS will apply.

Departing Load is, consequently, the class of load that will be competing for CRS exemptions under the Megawatt Cap.

While the proposed definition generally comports with the definition in the DL Decision, the definition omits a list of exceptions to the definition for (1) changes in the normal course of business, (2) new customer load or incremental customer load, and (3) load temporarily taking service from back-up generation. (See DL Decision, *mimeo*, at 3.) These exceptions are not treated as Departing Load, no CRS applies and thus no CRS exemption is required. The Commission should clarify that these categorical exclusions will likewise not be treated as Departing Load, and thus require no CRS exemption, for purposes of its adopted regulations.

**4. The Commission should clarify the measurement of Departing Load to be applied against the Megawatt Cap.**

"Megawatt Cap" is defined in subdivision (p) as "*the total amount of generating capacity, expressed in megawatts, eligible for a CRS Exemption, consistent with the provisions of CPUC Decision 03-04-030 and subsequent*

*CPUC Decisions.*” The proposed regulations raise an ambiguity in determining the measurement of Departing Load to be applied against the Megawatt Cap.

The DL Decision makes clear that the exemptions apply to “Departing Load” as defined. (See *generally* Ordering Paragraphs 4-10.) “Departing Load” is the portion of the customer’s “electric load” that departs utility service. (See DL Decision, mimeo, at 2.) The exemptions are not provided to “serving generation.”

The use of generating capacity may result in an inaccurate measurement of Departing Load in cases in which the amount of Departing Load seeking an exemption does not correlate to the size of the generating facility being installed by the customer. For example, a customer may install a generating facility of 50 MW to serve an average 3 MW of unserved load and plan to deliver the remaining 47 MW to the utility grid for sales in the wholesale market. Counting the full 50 MW of generation against the Megawatt cap would be unjustified, since 47 MW of the generation had nothing to do with Departing Load. Importantly, counting the MW of installed generation rather than the actual Departing Load would unfairly reduce the cap available for other customers.

Using installed capacity to measure contribution to the Megawatt Cap for 100% load factor projects makes sense and simplifies the cap accounting procedures. For a customer with a lower load factor or for a customer that may sell excess generation to the grid, counting installed capacity against the Megawatt Cap will exhaust the cap more quickly without justification. EPUC

proposes that for these types of projects, the Commission instead count the customer's 12-month historical average load against the Megawatt Cap.

### **Section 1395.3. CRS Exemption Queue and Procedures for Updating**

#### **5. The Commission should allow a reasonable time to begin customer generation operation following the initial application for the CRS exemption before revoking a Departing Load's queue position.**

The proposed regulations establish a first-come, first-serve queue for CRS exemption based upon the time at which a Departing Load customer submits its application for exemption. The regulations appropriately provide that the Commission will update the queue weekly. Subdivision (d)(1) provides that the Commission will *"[r]emove CRS Exemption requests if a Customer does not commence operation within twelve months from the date a CRS Exemption request is approved by the Commission."* These provisions require further consideration and modification.

Twelve months may be a reasonable time for the period between application and operations for small distributed generation projects. As the Commission well knows through its administration of plant siting, however, larger projects may well take much longer than 12 months. The regulations thus should provide for two exceptions from this limitation. For projects of 49 MW or more, the project should be granted automatically an initial period of 24 months. Moreover, for any project, the regulations should provide the Commission the authority to extend the initial period upon a showing that the applicant is actively progressing in the permitting and/or construction of the project.

EPUC appreciates the opportunity to provide these comments and looks forward to further discussions on the issues presented herein.

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Respectfully submitted,

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Evelyn Kahl  
Alcantar & Kahl  
120 Montgomery Street, Suite 2200  
San Francisco, California 94104  
415.421.4143 office  
415.989.1263 fax  
[ek@a-klaw.com](mailto:ek@a-klaw.com)

Counsel to the Energy Producers and  
Users Coalition